

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JENNIFER MAE MATHIS,

Plaintiff,

V.

CAROLYN W. COLVIN, Acting Commissioner  
of Social Security,

Defendant.

Case No. 3:15-cv-05804-RJB

**ORDER REVERSING AND  
REMANDING DEFENDANT'S  
DECISION TO DENY BENEFITS**

Plaintiff Jennifer Mae Mathis seeks review of the denial of her application for social security income (“SSI”) benefits. Plaintiff contends that the administrative law judge (“ALJ”) erred in evaluating whether plaintiff met listing 12.05(C), the medical evidence, and plaintiff’s credibility. Dkt. 17 at 2. As discussed below, the Court **REVERSES** the Commissioner’s final decision and **REMANDS** the matter for an immediate award of benefits.

## BACKGROUND

On January 27, 2010, plaintiff protectively filed an application for SSI benefits, alleging disability as of February 1, 2009. Dkt. 13, Administrative Record (“AR”) 87. Plaintiff’s application was denied initially and on reconsideration. *Id.* After a hearing and an unfavorable decision, plaintiff appealed to the Appeals Council. AR 17. The Appeals Council remanded the case for a new hearing. *Id.* After the ALJ conducted a second hearing on June 5, 2014, the ALJ

1 issued a decision finding plaintiff not disabled. AR 17-30.

## 2 THE ALJ'S DECISION

3 Utilizing the five-step disability evaluation process,<sup>1</sup> the ALJ found:

4 **Step one:** Plaintiff has not engaged in substantial gainful activity since January 27, 2010,  
the application date.

5 **Step two:** Plaintiff has the following severe impairments: obesity, cognitive disorder with  
6 borderline intellectual functioning, depression, anxiety, posttraumatic stress disorder, and  
7 personality disorder.

8 **Step three:** Plaintiff's impairments do not meet or equal the requirements of a listed  
impairment.<sup>2</sup>

9 **Residual Functional Capacity:** Plaintiff has the ability to perform light work, except she  
10 should avoid unprotected heights and hazardous worksites. She can occasionally climb,  
stoop, crouch, kneel, and crawl. She is limited to simple, entry-level work that does not  
11 require written instructions or written reports. She can have occasional interaction with  
coworkers but no interaction with the public.

12 **Step four:** Plaintiff has no past relevant work.

13 **Step five:** As there are jobs that exist in significant numbers in the national economy that  
plaintiff can perform, plaintiff is not disabled.

14 See AR 19-30. The Appeals Council denied plaintiff's request for review, making the ALJ's  
15 decision the Commissioner's final decision. See AR 6-11.<sup>3</sup>

## 17 DISCUSSION

18 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of  
19 social security benefits if the ALJ's findings are based on legal error or not supported by  
20 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th  
21 Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

22 \_\_\_\_\_  
23 <sup>1</sup> 20 C.F.R. § 416.920.

<sup>2</sup> 20 C.F.R. Part 404, Subpart P, Appendix 1.

<sup>3</sup> The rest of the procedural history is not relevant to the outcome of the case and is thus omitted.

1           **I. Listing 12.05(C)**

2         Plaintiff asserts that the ALJ erred by failing to find that she met the requirements found  
3         in 20 C.F.R. Part 404, Subpart P, Appendix 1, § 12.05(C) (“listing 12.05(C)”). *See* Dkt. 17 at  
4         2-8. The Court agrees.

5         At step three of the sequential disability evaluation process, the ALJ must evaluate the  
6         claimant’s impairments to see if they meet or medically equal any of the impairments listed in 20  
7         C.F.R. Part 404, Subpart P, Appendix 1. *See* 20 C.F.R. § 416.920(d); *Tackett v. Apfel*, 180 F.3d  
8         1094, 1098 (9th Cir. 1999). If any of the claimant’s impairments meet or medically equal a listed  
9         impairment, she is deemed disabled. *See* 20 C.F.R. § 416.920(d). The burden of proof is on the  
10        claimant to establish that her impairments meet or equal a listing. *See Tackett*, 180 F.3d at 1098.

11        Listing 12.05(C) reads in relevant part:

12        12.05 Intellectual disability: Intellectual disability refers to significantly  
13        subaverage general intellectual functioning with deficits in adaptive functioning  
14        initially manifested during the developmental period; i.e., the evidence  
15        demonstrates or supports onset of the impairment before age 22.

16        The required level of severity for this disorder is met when the requirements in A,  
17        B, C, or D are satisfied. . . .

18        C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or  
19        other mental impairment imposing an additional and significant work-related  
20        limitation of function . . .

21        First, plaintiff argues that the evidence in the record shows that she suffered an onset of  
22        intellectual disability prior to age 22. *See* Dkt. 17 at 2-3. The Eighth Circuit has found difficulties  
23        in academic functioning sufficient to satisfy the requirement of deficits in adaptive functioning  
24        during the developmental period. *See Christner v. Astrue*, 498 F.3d 790, 793 (8th Cir. 2007)  
25        (early dropout and participation in special education classes likely meets burden of establishing  
26        onset before age 22); *Maresh v. Barnhart*, 438 F.3d 897, 900 (8th Cir. 2006) (struggling in

1 special education classes through ninth grade, having trouble with reading, writing, and math,  
2 and dropping out of school constituted evidence of intellectual disability manifesting prior to age  
3 22). While not making such a finding, the Ninth Circuit has indicated that such circumstantial  
4 evidence of adaptive functioning deficits could prove onset before age 22 as well. *See Sorter v.*  
5 *Astrue*, 389 F. App'x 620, 622 (9th Cir. 2010); *Gomez v. Astrue*, 695 F.Supp.2d 1049 (C.D. Cal.  
6 2010).

7 Here, plaintiff dropped out of school in eighth grade. *See* AR 676. While she was in  
8 school, she took special education classes but could not maintain passing grades. *See* AR 676-77,  
9 706. She never finished obtaining her GED, describing it as "too hard." *See* AR 706. At age 20,  
10 plaintiff attempted a trial work experience with the Division of Vocational Rehabilitation, where  
11 she was found to be unable to follow through with work-related assignments, to have difficulty  
12 interacting with coworkers and supervisors, and to be generally not ready and able to benefit  
13 from vocational rehabilitation services. *See* AR 293. Therefore, plaintiff met her burden of  
14 establishing subaverage general intellectual functioning with deficits in adaptive functioning  
15 manifested before age 22.

16 Next, plaintiff provided evidence of a full scale IQ score of 64 found by an examining  
17 psychologist in 2008 and a full scale IQ score of 61 found by a separate examining psychologist  
18 in 2010. *See* AR 679, 709. The ALJ gave little weight to these scores because "at least one  
19 examining psychologist believed the claimant functions at a higher level than her IQ test scores  
20 would indicate." *See* AR 23, 25. The one examining psychologist to whom the ALJ referred is  
21 presumably Robert E. Schneider, Ph.D., who noted that plaintiff's presentation and history  
22 "suggest[ed]" a higher level of functional intelligence than her IQ scores would imply. *See* AR  
23 718. Dr. Schneider then stated, "[h]owever, her coping skills and ability to deal with problems

1 and changes [are], in fact, within the range” of intellectual disability. *See id.* The ALJ also gave  
 2 weight to testimony of Margaret R. Moore, Ph.D., who did not treat or examine plaintiff. *See AR*  
 3 22. Dr. Moore opined that she disagreed with the diagnosis of intellectual disability based on the  
 4 IQ scores because the record showed some physicians opining to higher functioning. *See AR* 62.

5 In resolving questions of credibility and conflicts in the evidence, an ALJ’s findings  
 6 “must be supported by specific, cogent reasons.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir.  
 7 1998). The ALJ can do this “by setting out a detailed and thorough summary of the facts and  
 8 conflicting clinical evidence, stating his interpretation thereof, and making findings.” *Id.* When  
 9 an examining physician’s opinion is contradicted, that opinion “can only be rejected for specific  
 10 and legitimate reasons that are supported by substantial evidence in the record.” *Lester v. Chater*,  
 11 81 F.3d 821, 830-31 (9th Cir. 1996). An examining physician’s opinion is “entitled to greater  
 12 weight than the opinion of a nonexamining physician.” *Id.*

13 Here, the ALJ provided no specific and legitimate reason supported by substantial  
 14 evidence to disregard the two consistent IQ scores provided by separate examining psychologists  
 15 in favor of Dr. Schneider’s opinion. One psychologist opining to a higher level of functional  
 16 intelligence is not in itself a reason to discount the other psychologists’ findings; that opinion  
 17 simply creates the contradiction in the record that triggers the need for legally sufficient reasons  
 18 to discount their findings. The ALJ provided no such reason.<sup>4</sup> *See AR* 23, 25. Furthermore, the  
 19 ALJ mischaracterized Dr. Schneider’s opinion. While Dr. Schneider found plaintiff’s  
 20 presentation could suggest higher functioning than her IQ scores indicated, he found that her

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21  
 22 <sup>4</sup> Even were the Court to infer from the ALJ’s full analysis that he was discounting the IQ scores  
 23 because he believed plaintiff’s “main issue may be with motivation, not cognitive functioning”  
 (see *AR* 23), such reasoning ignores that listing 12.05(C) specifically premises a finding of  
 disability on subaverage intellectual functioning in combination with another impairment that  
 imposes additional functional workplace limitations, such as lack of motivation.

1 coping skills caused her to function at a level consistent with intellectual disability. *See* AR 718.  
2 The ALJ likewise provided no reason for giving greater weight to nonexamining psychologist  
3 Dr. Moore, who relied on Dr. Schneider's opinion to disregard the diagnoses of intellectual  
4 disability in the record. Therefore, the ALJ provided no sufficient reason to disregard the valid  
5 IQ scores that plaintiff provided in support of a finding that she was disabled under listing  
6 12.05(C).

7 Finally, plaintiff provided evidence of a mental impairment imposing an additional and  
8 significant work-related limitation of function. With respect to listing 12.05(C), an impairment  
9 will be deemed to impose "a significant work-related limitation of function when its effect on a  
10 claimant's ability to perform basic work activities is more than slight or minimal." *Fanning v.*  
11 *Bowen*, 827 F.2d 631, 633 (9th Cir. 1986). A "finding of severity" alone at step two of the  
12 sequential disability evaluation process "automatically satisfie[s] the more than slight or minimal  
13 effect standard." *Id.* at n. 3. At step two, the ALJ found several severe mental impairments. *See*  
14 AR 19. Therefore, plaintiff met all of the requirements of listing 12.05(C). Accordingly, the  
15 ALJ's decision is in error and must be remanded.

## 16 II. Remand for an Award of Benefits

17 Plaintiff alleges that the ALJ erred in several other areas, including evaluating other  
18 medical opinions and plaintiff's credibility. *See* Dkt. 17. However, considering the ALJ's error in  
19 evaluating whether plaintiff met listing 12.05(C), the final question requiring resolution is  
20 whether the Court should, at its discretion, remand this case for further proceedings or for an  
21 award of benefits.

22 Under the Social Security Act, "courts are empowered to affirm, modify, or reverse a  
23 decision by the Commissioner 'with or without remanding the cause for a rehearing.'" *Garrison*

1 *v. Colvin*, 759 F.3d 995, 1019 (9th Cir. 2014) (emphasis in original) (quoting 42 U.S.C.  
 2 § 405(g)). Although a court should generally remand to the agency for additional investigation or  
 3 explanation, a court has discretion to remand for immediate payment of benefits. *Treichler v.*  
 4 *Comm'r, Soc. Sec. Admin.*, 775 F.3d 1090, 1099-1100 (9th Cir. 2014). Benefits may be awarded  
 5 where “the record has been fully developed” and “further administrative proceedings would  
 6 serve no useful purpose.” *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996); *Holohan v.*  
 7 *Massanari*, 246 F.3d 1195, 1210 (9th Cir. 2001). Specifically, benefits should be awarded where:

8       (1) the ALJ has failed to provide legally sufficient reasons for rejecting [the  
 9       claimant's] evidence, (2) there are no outstanding issues that must be resolved  
 10      before a determination of disability can be made, and (3) it is clear from the  
 11      record that the ALJ would be required to find the claimant disabled were such  
 12      evidence credited.

13      *Smolen*, 80 F.3d 1273 at 1292; *McCartey v. Massanari*, 298 F.3d 1072, 1076-77 (9th Cir. 2002).

14      Here, the ALJ failed to provide legally sufficient reasons for rejecting plaintiff's evidence  
 15      that she met listing 12.05(C). *See infra*, I. Plaintiff has already had two hearings before this ALJ,  
 16      including one hearing after the Appeals Council ordered a remand of the first decision denying  
 17      benefits. *See AR 37-54, 55-81*. Once again, the ALJ has failed to provide legally sufficient  
 18      reasons to discount the evidence of plaintiff's intellectual disability.

19      Second, there are no outstanding issues that must be resolved. As described above,  
 20      plaintiff met her burden of establishing that her impairments met listing 12.05(C). *See infra*, I.  
 21      The evidence establishes that plaintiff suffered an onset of intellectual disability before age 22.  
 22      *See id.* The only examining psychologists who performed IQ testing found scores within the  
 23      range required by listing 12.05(C). *See id.* The ALJ found at step two that plaintiff had mental  
 24      impairments imposing an additional and significant work-related limitation of function. *See id.*

25      Third, crediting the improperly discounted evidence as true, the ALJ would be required to

1 find plaintiff disabled under listing 12.05(C). *See* 20 C.F.R § 416.920(d) (if any of the claimant's  
2 impairments meet or medically equal a listed impairment, she is deemed disabled).

3 Accordingly, the Court finds that the record has been fully developed in this case, and  
4 that remanding for further proceedings "would serve no further purpose." *Smolen*, 80 F.3d at  
5 1292; *Holohan*, 246 F.3d at 1210. Indeed, allowing the Commissioner to decide these issues  
6 again "would create an unfair 'heads, we win; tails, let's play again' system of disability benefits  
7 adjudication." *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004); *see also Moisa v.*  
8 *Barnhart*, 367 F.3d 882, 887 (9th Cir. 2004) (noting that the "Commissioner, having lost this  
9 appeal, should not have another opportunity . . . any more than [the claimant], had he lost, should  
10 have an opportunity for remand and further proceedings."). Because review of the record as a  
11 whole does not create serious doubt that plaintiff is disabled, the Court remands the case for an  
12 immediate award of benefits.

13 **CONCLUSION**

14 For the foregoing reasons, the Commissioner's final decision is **REVERSED** and this  
15 case is **REMANDED** for an immediate award of benefits.

16 DATED this 22<sup>nd</sup> day of September, 2016.

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19 ROBERT J. BRYAN  
United States District Judge